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June 12, 2020

By ECF & Email

Honorable Ronnie Abrams
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

**Re: *United States v. Joel Pena*
18 Cr. 640 (RA)**

Dear Judge Abrams:

Section 15002(b)(2) of the Federal CARES Act 2020 allows a District Court Judge to conduct felony pleas and sentencing hearings by video conference or by telephonic conference. “If specific reasons that the plea or sentencing in a case cannot be further delayed without serious harm to the interests of justice.”

Before a telephonic proceeding can occur the Federal CARES Act requires satisfaction of four procedural requirements. First, the government or judge moves for video or telephonic proceedings. Second, the assigned judge must make the respected findings of necessity. Third, the defendant must provide informed consent to use telephonic proceedings after consultation with counsel. Fourth, the use of the telephonic proceeding must not “obviate a defendant’s right to counsel under the 6th Amendment of the Constitution of the US or the Federal rules of criminal procedure.” § 15002(b)(7).

In Mr. Pena’s case all of the preconditions for his guilty plea to proceed as scheduled on Monday, June 15, 2020, have been met.

As the Court is aware, Mr. Pena was arrested in September 2019. Counsel had informed the Court as early as December 2019, of an anticipated guilty plea. Counsel, and with the

government's consent, requested a number of adjournments in order to complete the details of his plea and plea agreement.

Unfortunately developments within and without the Metropolitan Correctional Center ("MCC") worked against effectuating the plea.

In January and February 2020 counsel could not visit Mr. Pena because of security lockdowns at the MCC. In early March counsel received the final proposed plea agreement from the government and the case was scheduled for plea on March 3, but counsel requested a short adjournment to consult with Mr. Pena, however informing the Court of the anticipated guilty plea on March 13, 2020.

Then the world within and outside the MCC was changed by the COVID-19 pandemic.

For approximately the last 90 days the MCC has been on lockdown with no personal attorney visits and defendants being in their respected cells for the most part 23 out of 24 hours a day. During this period of time new arrests have taken place and new inmates have been brought into the MCC. It is still a "hot-zone" with new arrests and other inmates and prison employees being stricken with the virus.

During these same approximately 90 days counsel and Mr. Pena had spoken by pre-arranged telephone calls and emails when possible. To accomplish this end has taken time and in order for counsel to speak with a defendant he must go through certain protocols when arranging dates and times to have a conference.

In addition, certain documents had to be executed by the defendant and provided to the Court to enable the plea. Counsel has now obtained all necessary documents to allow the plea and the fact that Mr. Pena faces a mandatory 24 month sentence is all the more reason to proceed with his plea as after hopefully an expedited Presentence Investigation Report and sentence can take place, and designation to a safer and less severe prison facility.

There is no crystal ball that reflects when the Federal Court(s) will return to "normalcy" and it is in everyone's interest, but most importantly Mr. Pena's, to finalize his case as expeditiously as possible.

The Court can question Mr. Pena before his plea and confirm his positions as outlined in this letter.

Hon. Ronnie Abrams

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Very truly yours,

William J. Stampur

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cc: AUSA Michael Neff

Mr. Pena's sentencing will proceed as scheduled on Monday, June 15, 2020
at 12:00 p.m.

SO ORDERED.



Ronnie Abrams, U.S.D.J.

June 13, 2020